

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:18-CR-510-FL-1
No. 5:20-CV-268-FL

JESSE BERNALE STINES, JR.,)	
)	
Petitioner,)	
)	ORDER
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	


This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge Robert T. Numbers, II, regarding petitioner’s motion to vacate, set aside, or correct his sentence, under 28 U.S.C. § 2255, as amended (DE 52, 58), the government’s motion to dismiss (DE 75), and petitioner’s motion to amend (DE 95). No objections to the M&R have been filed, and the time within which to make any objection has expired. This matter is ripe for ruling.

Upon careful review of the M&R and of the record generally, having found no clear error, the court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, the government’s motion to dismiss (DE 75) is DENIED, petitioner’s amended motion to vacate (DE 58) is GRANTED in part with respect to the claim that his former counsel failed to file a direct appeal, petitioner’s second motion to amend (DE 95) is DENIED as moot, and the remainder of petitioner’s claims in the original motion to vacate (DE 52) and the amended motion (DE 58) are DISMISSED without prejudice to raising them either on direct appeal or in a new § 2255 motion filed after his direct appeal. The motion to vacate at docket entry

52 is therefore DISMISSED without prejudice and the amended motion at docket entry 58 is GRANTED in part and DISMISSED without prejudice in part.

The court VACATES the September 11, 2019, judgment (DE 44) and DIRECTS the clerk to enter amended judgment of conviction from which petitioner may file a direct appeal. The court DIRECTS the Federal Public Defender to oversee appointment of counsel to assist petitioner with his direct appeal. The clerk shall enter judgment closing the instant § 2255 proceedings. A certificate of appealability is DENIED.

SO ORDERED this the 15th day of June 2023.



LOUISE W. FLANAGAN
United States District Judge